

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Baldwin Analyst: Roger Lackey Bill Number: AB 229  
Related Bills: See Legislative History Telephone: 845-3627 Introduced Date: 01-28-99  
Attorney: Doug Bramhall Sponsor: \_\_\_\_\_

**SUBJECT:** Limited Liability Company/Professional Services

### SUMMARY

This bill would amend the Beverly-Killea Limited Liability Company Act to provide that a limited liability company (LLC) cannot render certain professional services and that an LLC may engage in any other lawful activity, even if that activity requires licensing, registration, or certification pursuant to the Business and Professions Code.

### EFFECTIVE DATE

This bill would become effective January 1, 2000.

### LEGISLATIVE HISTORY

AB 2245 (1997/1998); AB 2401 (1996), SB 141 (1996), SB 13 (Stats. 1995, Ch. 2); SB 469 (Stats. 1994, Ch. 1200); SB 930 (1994); SB 2053 (Stats. 1994, Ch. 1010); .

### Program/Background

The Beverly-Killea Limited Liability Company Act authorized the creation of limited liability companies in 1994. An LLC is a form of hybrid unincorporated business association, having two or more members, which affords its members:

- limited liability, with the extent of a member's liability limited to equity investment;
- flexible management alternatives; and
- liberal membership qualification requirements.

LLCs combine traditional corporate and partnership characteristics and resemble forms of limited liability organizations, which have been well known and widely used in Europe and South America. Members of an LLC are afforded the same advantage of limited liability as are shareholders of a corporation while usually being subject to only one level of income tax as are the limited partners of a limited partnership. LLCs lack the membership restrictions imposed on S corporations.

### Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

### Department Director

### Date

**Gerald Goldberg**

**2/26/1999**

### SPECIFIC FINDINGS

**Current federal law** does not recognize LLCs, but treats them as partnerships or corporations or entities that are disregarded for federal tax purposes.

**Current state law** allows domestic or foreign LLCs to engage in any lawful business except the banking, insurance, or trust company business. However, LLCs are not permitted to render professional services unless expressly authorized by specific law.

**State law** defines professional services as any type of professional services which may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code or the Chiropractic Act.

**This bill** would provide that an LLC may engage in any lawful activity, even if that activity requires licensing, registration, or certification pursuant to the Business and Professions Code. However, this bill would not permit an LLC to render the professional services of:

Chiropractors, dentists, medical doctors, research psychoanalysts, speech pathologists, audiologists, dispensing opticians, registered nurses, nurse practitioners, physician assistants, psychologists, optometrists, pharmacists, veterinary doctors, acupuncturists, midwives, architects, landscape architects, tax preparers, certified public accountants, professional engineers, professional land surveyors, marriage, family and child counselors, clinical social workers, educational psychologists or attorneys.

In addition, **this bill** would restate current law and provide that a member of a LLC shall be personally liable under a judgment of a court or for any debt, obligation, or liability of the LLC, without regard to how that liability occurred, to the same extent that under similar circumstances and conditions a shareholder of a corporation would be liable for the debts, obligations, or liability of the corporation, as specified.

**This bill** would repeal uncodified law prohibiting LLCs from rendering professional service unless expressly authorized.

### Policy Considerations

The Beverly-Killea Limited Liability Company Act included uncodified law specifying that it should not be construed as allowing LLCs to render professional services unless expressly authorized by other statutes. This bill would allow the majority of professions regulated by the Business and Professions Code to form LLCs while specifying those few professional services that cannot be rendered.

### Implementation Considerations

This bill may result in an increase in the number of LLCs that form in California. However, implementation of this bill would not significantly impact the department.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

In accordance with SB 469 (Chapter 1200/Stats.1994), existing LLC fees will be adjusted upward beginning January 1, 1999, to produce a revenue neutral result for existing LLCs. Fee adjustments, up or down, will be required in subsequent years to maintain revenue neutrality for all LLCs operating in California. It is not known in advance whether fee recalculations will result in net revenue gains, losses, or neutrality for those particular business entities added by this bill. It is anticipated, however, that any revenue imbalance resulting from these additional entities would not be significant.

BOARD POSITION

Pending.